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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,951	12/22/2001	Jonathan Martinek	2679	8579

7590

03/04/2004

Tyco Healthcare Group LP  
150 Glover Avenue  
Norwalk, CT 06856

EXAMINER
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JACKSON, GARY

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/033,951

Applicant(s)

MARTINEK, JONATHAN

Examiner

Gary Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-10, 13, 16 and 17 is/are rejected.
- 7) ☒ Claim(s) 6-7, 11-12 and 14-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.



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### **DETAILED ACTION**

Applicant's arguments filed December 11, 2003 have been fully considered and as a result the rejection directed to claims 10-15 has been withdrawn. However, the arguments directed to claims 1-5, 8-9, 10, 13 and 16-17 are not persuasive.

#### ***Double Patenting***

Claim 15 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 14. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 8, 9 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson et al (US Patent 5,911,721) in view of Larsen et al (US Patent 5,948,000).

The patent to Larsen et al teaches a two part suture anchor having a pin with a traverse bore and a sleeve wherein the pin is adapted to be inserted into the sleeve as recited in claim 1. However, Larsen et al is lacking a teaching of a threaded outer surface of the sleeve. A threaded outer sleeve for this type fastener is known in the art. Nicholson et al teaches that threading on the outer surface of the sleeve is an alternative to ridges on the outer surface (col. 7, lines 42-66). Therefore it would have been obvious to one having ordinary skill in the art to provide Larsen with a threaded outer sleeve to minimize the size of the predrilled hole in the bone.

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Concerning claim 4, Larsen suggests that the pin can have non-circular cross-section to prevent rotation of the shaft. (col. 4, lines 49-53). The particular hexagonal cross-section would have been an obvious design choice.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Goble et al (US Patent 5,702,397). The Goble discloses each of the limitation of claims 10 and 13 as follow:

- a non-expandable outer sleeve 151, having a bore 157;
- a pin 158 having a proximal end and distal end with a shaft extending there between and having minimal rotation since the pin is slid into the sleeve 151;

***Allowable Subject Matter***

Claims 6-7, 11-12 and 14-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Concerning the applicant arguments directed to the references, the examiner respectively disagree with applicant's assertion that Nicholson et al device is not configure to be threaded or screwed into the bone, but rather are intended to be inserted as a plug and radially expanded to secure the plug within the bone. The examiner has clearly pointed in the Office Action that

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Nicholson et al teach a member (sleeve) having a "self tapping screw thread for engagement with the inner surface of the bone opening". Further that the member is adapted to receive an insertion member (pin) into a channel of the member (sleeve)".

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Jackson whose telephone number is (703) 308-4302. The examiner can normally be reached on Mon.-Thurs. 7:30 am to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gary Jackson  
Primary Examiner  
Art Unit 3731

GJ  
March 3, 2004